

Union Calendar No. 574

106TH CONGRESS
2^D SESSION**H. R. 1924****[Report No. 106-976]**

To prevent Federal agencies from pursuing policies of unjustifiable non-acquiescence in, and relitigation of, precedents established in the Federal judicial courts.

 IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 12, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 25, 1999]

A BILL

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial courts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Federal Agency Compli-*
 3 *ance Act”.*

4 **SEC. 2. PROHIBITING AGENCY NON-ACQUIESCENCE IN AP-**
 5 **PELLATE PRECEDENT.**

6 *(a) IN GENERAL.—Chapter 7 of title 5, United States*
 7 *Code, is amended by adding at the end the following:*

8 **“§ 707. Adherence to court of appeals precedent**

9 *“(a) Except as provided in subsection (b), an agency*
 10 *(as defined in section 701(b)(1) of this title) shall in civil*
 11 *matters, in administering a statute, rule, regulation, pro-*
 12 *gram, or policy within a judicial circuit, adhere to the ex-*
 13 *isting precedent respecting the interpretation and applica-*
 14 *tion of such statute, rule, regulation, program, or policy,*
 15 *as established by the decisions of the United States court*
 16 *of appeals for that circuit.*

17 *“(b) An agency is not precluded under subsection (a)*
 18 *from taking a position, either in an administrative pro-*
 19 *ceeding or in litigation, that is at variance with precedent*
 20 *established by a United States court of appeals if—*

21 *“(1) it is not certain whether the administration*
 22 *of the statute, rule, regulation, program, or policy*
 23 *will be subject to review exclusively by the court of*
 24 *appeals that established that precedent or a court of*
 25 *appeals for another circuit;*

1 “(2) the Government did not seek further review
2 of the case in which that precedent was first estab-
3 lished, in that court of appeals or the United States
4 Supreme Court, because—

5 “(A) neither the United States nor any
6 agency or officer thereof was a party to the case;
7 or

8 “(B) the Solicitor General determines or the
9 agency officer responsible for such determination
10 determines the decision establishing that prece-
11 dent was otherwise substantially favorable to the
12 agency; or

13 “(3) it is reasonable to question the continued
14 validity of that precedent in light of a subsequent de-
15 cision of that court of appeals or the United States
16 Supreme Court, a subsequent change in any pertinent
17 statute or regulation, or any other subsequent change
18 in the public policy or circumstances on which that
19 precedent was based.”.

20 (b) CLERICAL AMENDMENT.—The table of sections for
21 chapter 7 of title 5, United States Code, is amended by add-
22 ing at the end the following new item:

“707. Adherence to court of appeals precedent.”.

1 **SEC. 3. AVOIDING UNNECESSARILY REPETITIVE LITIGA-**
 2 **TION.**

3 (a) *IN GENERAL.*—Chapter 7 of title 5, United States
 4 Code, is amended by adding at the end the following:

5 **“§ 708. Avoiding unnecessarily repetitive litigation**

6 *“In supervising the conduct of civil litigation, the offi-*
 7 *cers of any agency of the United States authorized to con-*
 8 *duct litigation, including the Department of Justice acting*
 9 *under sections 516 and 519 of title 28, United States Code,*
 10 *should seek to ensure that the initiation, defense, and con-*
 11 *tinuation of proceedings in the courts of the United States,*
 12 *within, or subject to the jurisdiction of, a particular judi-*
 13 *cial circuit, avoids unnecessarily repetitive litigation on*
 14 *questions of law already uniformly resolved against the*
 15 *United States in 3 or more courts of appeals. A decision*
 16 *on whether to initiate, defend, or continue litigation is not*
 17 *subject to review in any court by mandamus or otherwise*
 18 *on the grounds that the decision violates this section.”.*

19 (b) *CLERICAL AMENDMENT.*—The table of sections for
 20 chapter 7 of title 5, United States Code, is amended by add-
 21 ing at the end the following new item:

“708. Avoiding unnecessarily repetitive litigation.”.

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